

1 MATTHEW D. POWERS (Bar No. 104795)  
2 [matthew.powers@tensegritylawgroup.com](mailto:matthew.powers@tensegritylawgroup.com)  
3 WILLIAM NELSON (Bar No. 196091)  
4 [william.nelson@tensegritylawgroup.com](mailto:william.nelson@tensegritylawgroup.com)  
5 ROBERT GERRITY (Bar No. 268084)  
6 [robert.gerrity@tensegritylawgroup.com](mailto:robert.gerrity@tensegritylawgroup.com)  
7 NATASHA SAPUTO (Bar No. 291151)  
8 [natasha.saputo@tensegritylawgroup.com](mailto:natasha.saputo@tensegritylawgroup.com)  
9 SAMANTHA JAMESON (Bar No. 296411)  
10 [samantha.jameson@tensegritylawgroup.com](mailto:samantha.jameson@tensegritylawgroup.com)  
11 JENNIFER ROBINSON (Bar No. 270954)  
12 [jen.robinson@tensegritylawgroup.com](mailto:jen.robinson@tensegritylawgroup.com)  
13 WANLI CHEN (Bar No. 300254)  
14 [wanli.chen@tensegritylawgroup.com](mailto:wanli.chen@tensegritylawgroup.com)  
15 TENSEGRITY LAW GROUP, LLP  
16 555 Twin Dolphin Drive, Suite 650  
17 Redwood Shores, CA 94065  
18 Telephone: (650) 802-6000  
19 Fax: (650) 802-6001

20 Attorneys for Plaintiff  
21 ARISTA NETWORKS, INC.

22 [Additional Counsel Listed in Signature Block]

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

29  
30 ARISTA NETWORKS, INC., ) Case No. 5:16-cv-00923-BLF  
31 )  
32 Plaintiff, ) **PLAINTIFF ARISTA NETWORKS,**  
33 ) **INC.'S ADMINISTRATIVE MOTION**  
34 ) **FOR LEAVE TO FILE UNDER SEAL**  
35 ) **ARISTA'S OPPOSITION TO CISCO'S**  
36 ) **DAUBERT MOTION TO EXCLUDE, IN**  
37 ) **PART, THE EXPERT OPINION OF**  
38 ) **FIONA SCOTT MORTON, PH.D.,**  
39 ) **ARISTA'S RESPONSE TO CISCO'S**  
40 ) **DAUBERT MOTION TO EXCLUDE THE**  
41 ) **EXPERT OPINION OF JOHN R. BLACK,**  
42 ) **JR., AND ARISTA'S OPPOSITION TO**  
43 ) **CISCO'S MOTION FOR SUMMARY**  
44 ) **JUDGMENT**

45  
46 v.  
47 CISCO SYSTEMS, INC.  
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49 Defendant.

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DEMAND FOR JURY TRIAL

1 Pursuant to Civil Local Rules 7-11 and 79-5(d)-(e) Plaintiff Arista Networks, Inc. (“Arista”)  
2 respectfully files this administrative motion for permission to file under seal portions of Arista’s  
3 Response to Cisco Systems, Inc.’s *Daubert* Motion to Exclude the Expert Opinion of John R. Black,  
4 Jr. (“Response to Black *Daubert*”), Arista’s Opposition to Cisco Systems, Inc.’s *Daubert* Motion to  
5 Exclude, In Part, the Expert Opinion of Fiona Scott Morton, Ph.D. (“Opposition to Scott Morton  
6 *Daubert*”), Arista’s Opposition to Cisco’s Motion for Summary Judgment (“Opposition to Motion for  
7 Summary Judgment”), and the entirety of certain exhibits thereto as referenced in the below table.

8 This motion is further supported by the Declaration of William Nelson in Support of Arista’s  
9 Administration Motion to File Under Seal portions of Arista’s Response to Black *Daubert*, Opposition  
10 to Scott Morton *Daubert*, Arista’s Opposition to Motion for Summary Judgment, and exhibits thereto.

11 Arista respectfully moves for an order sealing the documents and/or portions of the documents  
12 identified in the table below:

Document	Portion Under Seal	Party with Claim of Confidentiality
Plaintiff Arista Networks, Inc.’s Response to Black <i>Daubert</i>	Highlighted portions on p. 1	Cisco
Plaintiff Arista Networks, Inc.’s Opposition to Scott Morton <i>Daubert</i>	Highlighted portions on pp. 6-8, 10	Arista Cisco
Plaintiff Arista Networks, Inc.’s Opposition to Cisco’s Motion for Summary Judgment	Highlighted portions on pp. 2-5, 15, 16, 18, 19, 21, 23, 24	Arista Cisco
Exhibits 27, 28 to Declaration of William P. Nelson in Support of Arista’s Opposition to Cisco’s <i>Daubert</i> Motion to Exclude, in Part, the Expert Opinion of Fiona Scott Morton, Ph.D., Arista’s Response to Cisco’s <i>Daubert</i> Motion to Exclude the Expert Opinion of John R. Black, Jr., and Arista’s Opposition to Cisco’s Motion for Summary Judgement.	Entire Document	Arista
Exhibit 1 to Declaration of William P. Nelson in Support	Entire Document	Arista Cisco

Document	Portion Under Seal	Party with Claim of Confidentiality
of Arista's Opposition to Cisco's <i>Daubert</i> Motion to Exclude, in Part, the Expert Opinion of Fiona Scott Morton, Ph.D., Arista's Response to Cisco's <i>Daubert</i> Motion to Exclude the Expert Opinion of John R. Black, Jr., and Arista's Opposition to Cisco's Motion for Summary Judgement.		
Exhibits 3, 5, 8-14, 16, 18-23, 31, 32, 33 to Declaration of William P. Nelson in Support of Arista's Opposition to Cisco's <i>Daubert</i> Motion to Exclude, in Part, the Expert Opinion of Fiona Scott Morton, Ph.D., Arista's Response to Cisco's <i>Daubert</i> Motion to Exclude the Expert Opinion of John R. Black, Jr., and Arista's Opposition to Cisco's Motion for Summary Judgement.	Entire Document	Cisco

This Court has previously explained the standards for filing under seal materials in connection with a dispositive motion, such as Arista's Opposition to Cisco's Motion for Summary Judgment. "Unless a particular court record is one 'traditionally kept secret,'" a "strong presumption in favor of access" to judicial records "is the starting point." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). A party seeking to seal judicial records relating to a dispositive motion therefore bears the burden of overcoming this presumption by articulating "compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure." *Id.* at 1178-79. Compelling reasons for sealing court files generally exist when such "'court files might have become a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." *Id.* (quoting *Nixon v. Warner Commc'nns, Inc.*, 435 U.S. 589, 598 (1978)). However, "[t]he mere fact that the production of

1 records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation  
2 will not, without more, compel the court to seal its records.” *Kamakana*, 447 F.3d at 1179.

3 Furthermore, in this District, parties seeking to seal judicial records must also follow  
4 Civil L.R. 79-5, which requires, *inter alia*, that a sealing request be “narrowly tailored to seek  
5 sealing only of sealable material.” Civil L.R. 79-5(b). Where the submitting party seeks to file  
6 under seal a document designated confidential by another party (the “designating party”), the  
7 burden of articulating compelling reasons for sealing is placed on the designating party. Civil  
8 L.R. 79-5(e); *Cowan v. GE Capital Retail Bank*, No. 13-cv-03935-BLF, 2015 WL 1324848, at  
9 \*1 (N.D. Cal. Mar. 24, 2015) (J. Freeman).

10 Examples of materials that have been sealed under this standard include :

- 11 • Documents relating to the “internal procedures for addressing cardholder  
fraud notifications” of a bank, *id.* at \*2-3;
- 12 • Documents containing “information about [a party’s] business performance,  
structure, and finances that could be used to gain unfair business advantage  
against them,” *Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL  
1301186, at \*2 (N.D. Cal. Apr. 4, 2016) (J. Freeman);
- 13 • Documents containing “highly sensitive information regarding [a party’s]  
product architecture and development,” *Delphix Corp. v. Actifio, Inc.*, No. 13-  
cv-04613-BLF, 2014 WL 4145520, at \*2 (N.D. Cal. Aug. 20, 2014) (J.  
Freeman);
- 14 • Documents in the form of “emails containing information about [a party’s]  
business practices, recruitment efforts, and discussions regarding potential  
partnerships with other product manufacturers,” *Koninklijke Philips N.V. v.  
Elec-Tech Int’l Co., Ltd.*, No. 14-cv-02737-BLF, 2015 WL 581574, at \*1-2  
(N.D. Cal. Dec. 10, 2015) (J. Freeman); and
- 15 • Documents containing “information regarding non-public recruitment efforts  
and business practices” of a party, *id.* at \*2-3.

21 Arista’s Response to Black *Daubert* and Arista’s Opposition to Scott Morton *Daubert* are  
22 non-dispositive motions. In the context of non-dispositive motions, the materials may be sealed  
23 so long as the party seeking sealing makes a “particularized showing” under the “good cause”  
24 standard of Federal Rule of Civil Procedure 26(c). *Kamakana*, 447 F.3d at 1180 (quoting *Foltz*,  
25 331 F.3d at 1138). In addition, Civil Local Rule 79-5 requires that a party seeking sealing  
26 “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or  
27 otherwise entitled to protection under the law” (i.e., that the document is “sealable”). Civil L.R.  
28 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable

1 material.” *Id.*

2 The highlighted portions on page 1 of Arista’s Response to Black *Daubert*, pages 6-8, 10  
3 of Arista’s Opposition to Scott Morton *Daubert*, and pages 2-5, 15, 16, 18, 21, and 24 of Arista’s  
4 Opposition to Motion for Summary Judgment, and the entirety of Exhibits 1, 3, 5, 8-14, 16, 18-  
5 23, 31, 32, 33 contain information Cisco has designated “Confidential” or “Highly Confidential”  
6 under the parties’ prior Stipulated Protective Order. For that reason, Arista seeks leave to file  
7 these documents under seal. Arista expects that, pursuant to L.R. 79-5(d), Cisco will file a  
8 declaration with the Court consenting to the public filing of these documents or explaining why  
9 any remaining portions are sealable. Arista will also publicly file a redacted version of Arista’s  
10 Response to Black *Daubert*, Arista’s Opposition to Scott Morton *Daubert* Motion, and Arista’s  
11 Opposition to Motion for Summary Judgment.

12 The highlighted portions on pages 7 of Arista’s Opposition to Scott Morton *Daubert*, and pages  
13 5, 18, 19, and 23 of Arista’s Opposition to Motion for Summary Judgment, and the entirety of Exhibits  
14 1, 27, and 28 contain highly sensitive information regarding Arista’s products, customers, and  
15 financial data, including the names of Arista customers, sales and communications between Arista and  
16 its customers, and Arista’s revenues and gross margins. This information is maintained as confidential  
17 by Arista and if revealed could result in competitive harm to Arista. Specifically, if Arista’s  
18 competitors were to learn the highly sensitive information regarding Arista’s products, customers, and  
19 financials, including the names of current Arista customers, sales and communications between Arista  
20 and its customers, and revenues and gross margins, Arista’s competitors could use this information to  
21 the competitive disadvantage of Arista in the sales cycle. Thus, good cause and compelling reasons  
22 exist to seal these documents.

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24 Dated: March 28, 2018

Respectfully submitted,

25  
26 /s/ Matthew D. Powers  
27 MATTHEW D. POWERS (SBN 104795)  
28 WILLIAM NELSON (SBN 196091)  
ROBERT GERRITY (SBN 268084)  
NATASHA SAPUTO (SBN 291151)  
SAMANTHA JAMESON (Bar No. 296411)

1 JENNIFER ROBINSON (Bar No. 270954)  
2 WANLI CHEN (Bar No. 300254)  
3 TENSEGRITY LAW GROUP, LLP  
4 555 Twin Dolphin Drive, Suite 650  
5 Redwood Shores, CA 94065  
6 Telephone: (650) 802-6000  
7 Facsimile: (650) 802-6001  
8 Email:  
9 [matthew.powers@tensegritylawgroup.com](mailto:matthew.powers@tensegritylawgroup.com)  
10 [william.nelson@tensegritylawgroup.com](mailto:william.nelson@tensegritylawgroup.com)  
11 [robert.gerrity@tensegritylawgroup.com](mailto:robert.gerrity@tensegritylawgroup.com)  
12 [natasha.saputo@tensegritylawgroup.com](mailto:natasha.saputo@tensegritylawgroup.com)  
13 [samantha.jameson@tensegritylawgroup.com](mailto:samantha.jameson@tensegritylawgroup.com)  
14 [jen.robinson@tensegritylawgroup.com](mailto:jen.robinson@tensegritylawgroup.com)  
15 [wanli.chen@tensegritylawgroup.com](mailto:wanli.chen@tensegritylawgroup.com)

16 DAVID H. REICHENBERG (*Pro Hac Vice*)  
17 COZEN O'CONNOR  
18 277 Park Avenue, 19th Floor  
19 New York, NY 10172  
20 Telephone: (212) 883-4900  
21 Fax: (646) 461-2091  
22 Email:  
23 [dreichenberg@cozen.com](mailto:dreichenberg@cozen.com)

24 JONATHAN M. JACOBSON (NY SBN 1350495)  
25 CHUL PAK (*Pro Hac Vice*)  
26 WILSON SONSINI GOODRICH & ROSATI  
27 1301 Avenue Of The Americas, 40th Floor  
28 New York, NY 10019  
Telephone: (212) 999-5800  
Facsimile: (212) 999-5899  
Email:  
[jjacobson@wsgr.com](mailto:jjacobson@wsgr.com)  
[cpak@wsgr.com](mailto:cpak@wsgr.com)

SUSAN CREIGHTON (SBN 135528)  
SCOTT A. SHER (SBN 190053)  
BRADLEY T. TENNIS (SBN 281206)  
WILSON SONSINI GOODRICH & ROSATI  
1700 K Street NW, Fifth Floor  
Washington, D.C., 20006  
Telephone: (202) 973-8800  
Facsimile: (202) 973-8899  
Email:  
[screighton@wsgr.com](mailto:screighton@wsgr.com)  
[ssher@wsgr.com](mailto:ssher@wsgr.com)  
[btennis@wsgr.com](mailto:btennis@wsgr.com)

ROBERT A. VAN NEST (SBN 84065)  
BRIAN L. FERRALL (SBN 160847)  
MICHAEL S. KWUN (SBN 198945)  
DAVID J. SILBERT (SBN 173128)  
NICHOLAS DAVID MARAIS  
KEKER & VAN NEST LLP  
633 Battery Street

1 San Francisco, CA 94111  
2 Telephone: (415) 391-5400  
3 Facsimile: (415) 397-7188  
4 Email:

5 [rvannest@keker.com](mailto:rvannest@keker.com)  
6 [bferrall@keker.com](mailto:bferrall@keker.com)  
7 [mkwun@keker.com](mailto:mkwun@keker.com)  
8 [dsilbert@keker.com](mailto:dsilbert@keker.com)  
9 [nmarais@keker.com](mailto:nmarais@keker.com)

10  
11 Attorneys for Plaintiff  
12 ARISTA NETWORKS, INC.  
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